

Notice of Allowability

Application No.

09/926,679

Examiner

Abdel A. Mohamed

Applicant(s)

IKEDA ET AL.

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment and remarks of 7/9/04 and 11/12/04, and telephonic interview of 11/12/04.

2. ☒ The allowed claim(s) is/are 18-29.

3. ☐ The drawings filed on _____ are accepted by the Examiner.

4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some* c) ☐ None of the:

1. ☒ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.

(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)

2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____

4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 11/12/04.

7. ☐ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other _____.

DETAILED ACTION

CONTINUED EXAMINATION UNDER 37 CFR 1.114 AFTER FINAL REJECTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/12/04 has been entered.

ACKNOWLEDGMENT OF AMENDMENT, REMARKS AND STATUS OF THE CLAIMS

2. The amendment, remarks filed on 7/9/04 and the supplemental amendment filed 11/12/04, respectively are acknowledged, entered and considered. In view of Applicant's request of amendment filed 7/9/04, claims 1-17 have been canceled and claims 18-30 have been added. In supplemental amendment filed 11/12/04, claims 18, 20, 21, 28 and 29 have been amended and claim 30 has been canceled. Claims 18-29 are now pending in the application.

REASONS FOR ALLOWANCE

3. The following is an examiner's statement of reasons for allowance: None of the prior art of record either singularly or in combination teach or suggest a method for the treatment or inhibition of an infectious disease caused by *Aspergillus fumigatus* by

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administering an effective amount of a lipopeptide compound of Formula I in combination with Amphotericin B, Itraconazole, Nikkomycin X or Flucytosine and a pharmaceutical composition thereof in the manner claimed in the instant invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

CONCLUSION AND FUTURE CORRESPONDANCE

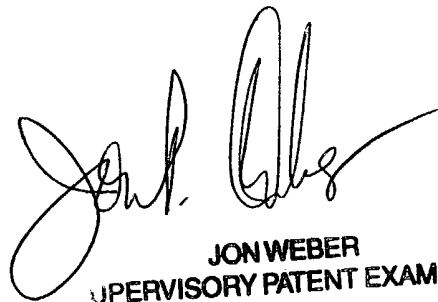
4. Claims 18-29 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abdel A. Mohamed whose telephone number is (571) 272 0955. The examiner can normally be reached on First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon P. Weber can be reached on (571) 272 0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JON WEBER
SUPERVISORY PATENT EXAMINER

AM Mohamed/AAM
November 12, 2004

DRAFT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Frederick D. Vastine on xxxx.

In the claims:

Cancel claims 20, 28 and 29.

Claim 18, second from last line, before "salt" insert --pharmaceutically acceptable--.

Claim 21, delete "lines 2-5 in its entirety" and instead insert --aspergillosis--.

Claim 30, line 1, delete --prophylactic and/or--.

Claim 30, line 4, change "1" to --18--.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: None of the prior art of record either singularly or in combination teach or suggest a method for the treatment or inhibition of an infectious disease caused by *Aspergillus fumigatus* by administering an effective amount of a lipopeptide compound of Formula I in combination with Amphotericin B, Itraconazole, Nikkomycin X or Flucytosine and a pharmaceutical composition thereof in the manner claimed in the instant invention.

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Mohamed/AAM